IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WA.No. 1587 of 2007

(*AGAINST THE JUDGEMENT IN WPC.11200/2007 Dated 18/06/2007*)

APPELLANTS/ PETITIONERS 2 TO 4 :
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1. PRADEEP KUMAR, AGED 35 YEARS, S/O.GANGADHARAN, POOKKOTTIL HOUSE, ADIMALY.

2. GOPALAN, AGED 62 YEARS, S/O.KOCHU, VAZHEPARAMBIL, ADIMALY.

3. SOMAN, AGED 55 YEARS, S/O.BALAN, NANTHYAT, ADIMALY.

BY ADV. SMT.C.S.SHEEJA

RESPONDENTS/ RESPONDENTS AND 1ST AND 5TH PETITIONER AND ADDITIONAL RESPONDENTS 5 TO 7:
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1. ADIMALY GRAMA PANCHAYATH, REPRESENTED BY THE SECRETARY TO PANCHAYATH, ADIMALY.

2. THE SECRETARY, ADIMALI GRAMA PANCHAYATH, ADIMALY.

3. CHELLAPPAN, AGED 48 YEARS, S/O.RAMAN, PUNNALAM, ADIMALY.

4. E.K.RAJAN, AGED 44 YEARS, S/O.KUMARAN, EDAPPARAMBATH HOUSE, ADIMALY.

5. P.K. VARGHESE, PALLIPPATTUKUDY, MANNAMKALA, ADIMALY.

6. JANSON, VADAKARA HOUSE, MANNAMKALA, ADIMALY.

7. MUHAMMED SIYAD, KOOTHALA HOUSE, IRUMBUPALAM, ADIMALY.

R1 AND R2 BY ADV. SRI.LATHEESH SEBASTIAN
BY ADV. SRI.NIDHI BALACHANDRAN
R5 BY ADV. SRI.BABU PAUL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1587 OF 2007

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Dated this the 12th September , 2007

J U D G M E N T

H.L. Dattu, C.J.:

Petitioner Nos. 2, 3 and 4 in W.P(C) 11200 of 2007 are the appellants before us in this Writ Appeal. They are aggrieved by the orders passed by the learned single Judge in W.P.(C) 11200 of 2007 dated 18th June, 2007. That is how they are before us in this appeal.

2. The facts in nut shell are: The petitioners/appellants were granted licences by the first respondnet -Grama Panchayat to do business in the rooms/shops allotted to them in the shopping complex of the Grama Panchayat. After the expiry of the licence period, the Panchayat has issued notices to the petitioners/appellants, calling upon them to quit and deliver the vacant possession of the rooms/shops in the shopping complex which are in their possession. Aggrieved by those notices, the petitioners were before this court.

3. The primary contention of the learned counsel appearing for the petitioners/appellants is that the agreement that was entered into between the petitioners/appellants and Grama Panchayat is not in accordance with the prescribed format under the provisions of the Kerala Panchayat Raj (Acquisition and Disposal of Property) Rules (hereinafter referrred to as 'Rules') and therefore, it is submitted, the respondent-Grama Panchayat has no authority of law to issue the impugned notices.

4. Under the rules, a format is prescribed and when the Panchayat allott rooms/shops to the petitioners, Panchayat is expected to have entered into an agreement with them in accordance with the format prescribed under the Rules. In the instant case, Petitioners are signatories to the agreement entered into between them. They did not question the correctness or otherwise of the said agreement at an earlier point of time. At this belated stage, the petitioners/appellants cannot contend before this court that the agreement, that is entered into between the petitioners/appellants and the Grama Panchayat, is not in accordance with the format prescribed under the Rules. Therefore, in our opinion, the contention canvasssed by the learned counsel for the petitioners/appellants has no merit whatsoever.

5. Learned counsel appearing for the petitioners/appellants also invites our attention to Rule 11 of the Rules. Rule 11 of the Rules only says that if for any reason, the Grama Panchayat wants to transfer the property of the Panchayat, by way of sale or granting of lease, letting out premises on rent requires to be made by way of public auction or by inviting tenders and this would not apply in the case of renewal of licences. In the instant case, the Grama Panchayat is not willing to renew the licences that was granted to the petitioners. Therefore, the said provision would not come in the way of the Panchayat in allotting the property which belongs to the Panchayat either by way of public auction or by inviting tenders. In the instant case, the Panchayat has passed a resolution to transfer the property of the Panchayat by granting licences and they thought it fit to allot the same, by way of public auction. This action of the Panchayat cannot be construed as one which is

in violation of Rule 11 of the Rules or an arbitrary action. In view of the above, the contention raised by the counsel , in our view, is devoid of any merit.

6. The learned counsel for the petitioners/appellants would further submit that the respondent-Grama Panchayat should have renewed the licences to the petitioners/appellants after the expirty of the licence period. This submission of the learned counsel , in our opinion, does not merit our attention for the simple reason that there was an agreement between the petitioners/appellants and the respondent-Grama Panchayat and it is only after the expiry of the agreement period, the respondent-Grama Panchayat has called upon the petitioners/appellants to quit and deliver the vacant possession of the rooms/shops which is in their occupation and which had been allotted to them by granting licences. After the expiry of the licence period, the respondent-Grama Panchayat has every right to ask for the vacant possession. Therefore, the said contention raised by the learned counsel also has no merit.

7. Learned counsel appearing for the petitioners/appellants would bring to our notice that the shop, which is in the possession of the third appellant, though was autioned, the auction bidder has withdrawn his participation from the aution proceedings. If that is so, it is left to the Grama Panchayat either to renew the licence of the third appellant or to auction the property in possession of the third appellant in accordance with the provisions of the Rules.

8 In view of the above, we do not see any justification to grant the reliefs sought for in this appeal. Therefore, the appeal requires to be rejected and it is rejected. However, the petitioners/appellants are granted a month's

time from today, to quit and deliver the vacant possession of the premises to the Grama Panchayat.

9. Pending Interlocutory Application (I.A. 702 of 2007) is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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